IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPEAL NO. 19 OF 2000

Messrs. Samriti Chemicals Ltd. ...Appellants.
Org. Respondents.

Vs

Vig Management Service Pvt. Ltd. ...Respondents.
Org. Petitioners.

Mr. V.Chandrashekar i/by Mr. Narayan Charipalli for the appellants.

Mr. V.R.Dhond a/w Ms. Deepali Bhandari i/by M/s. Federal Rashmibant for respondent.

CORAM : ANOOP V.MOHTA, J.

DATED : 20th July, 2007.

JUDGMENT:-

1. These are appeals under Section 10-F of the Companies Act-1956.

2. The appellants alleges that on 31/10/1995, the appellant company entered into a Sponsorship Agreement, with M/s. Westfin Securities Ltd., a Member of the OTCEI, to enable it to list on the OTC Exchange of India, in accordance with SEBI Rules & Regulations, Shares of Appellant Company have been allotted in terms of the Sponsorship Agreement.

3. On 01/11/1996, M/s. Westfin Securities Ltd., has assigned the Sponsorship Agreement to Respondent Company in violation of the Agreement. In the process of assignment, the transfer of the Appellant Company shares has taken place.

4. On the same day, M/s. Westfin Securities Ltd., NBFC, acting as guarantor to a financing transaction has executed the Deed of Pledge Cum Guarantee Agreement in favour of the Respondents, pledging and transferring the shares of the Appellant Company.

5. On 01/03/1997, Equity Shares of the Appellant Company, lodged for transfer by the Respondent Company.

6. On 19/07/1997, Appellant Company informed the respondent that the transfer has been declined by the Board of the Directors of the Appellant Company.

7. On 31/07/1998, respondent company filed a petition No.1 of 1999, before the Company Law Board, Western Region Bench, 1956, under Section 111A of the Companies Act, 1956, against the appellant company for

refusal to transfer.

8. On 15/03/1999, appellant company filed a rejoinder to the petition No.1 of 1999, of the respondent, before the Company Law Board.

9. Therefore, these appeals against the order dated 14/07/2000, of the Company Law Board.

10. The Company Law Board by a common order dated 14th July, 2000 decided Company Petition No. 15/1998 and Company Petition No. 1/1999 between the parties and held that "the Company had refused to register the impugned shares without sufficient cause and therefore the company has to register the transfers. We find that the company has already returned the share of certificates along with the transfer instruments to the petitioners. In view of this, we, direct the company to register the transfers within 30 days of lodgment of the share along with instruments of transfer by the petitioners."

11. Section 111A(2) of the Company Act, provides for refusal of transfer on the grounds of sufficient cause. Basically, the shares or debentures or

interest therein of a company should be freely transferred unless it is invalid either because of capital violation or because there is a fraud of malafide or other like factors to constitute the sufficient cause. In the present case, there are two agreements. One is Assignment of Sponsorship Agreement and other is Pledge Agreement, dated 01/11/1996. Both the agreements are between the Western India Financial Services Ltd. borrower, the Westfin Securities Ltd., the guarantor and the appellants company being the Lender.

12. According to the Pledge Agreement, the borrower had availed the discounted bill of exchange already discounted by it from the petitioners. The post dated cheques for the bills had also been given. As an additional security, the guarantor has agreed to pledge the shares which has obtained from the respondent company under the Sponsorship Agreement, that these shares could be registered in the name of the petitioners and not to be returned to the borrowers, once the cheques given by it were dishonoured the lender would have full right to dispose of the shares. The cheques issued by the borrower were dishonoured. The petitioner as noted

has obtained the shares for consideration by way of pledge and they sought registration of the same on the failure of the borrower in honouring its commitment.

13. The Company Law Board after considering the arguments and material placed on record, held: that the acquisition of shares based upon the Pledge Agreement, as the petitioner has obtained the shares for consideration by way of pledge and; rejected the appellants' case that the share has been acquired by virtue of Assignment of Sponsorship Agreement . After considering both the agreements and rival contentions, the findings as arrived at by the Company Law Board cannot be said to be perverse or bad in law.

14. There is an ample material on record, apart from the letter dated 1st November, 1996, addressed by Westfin Securities Limited to Samriti Chemicals Ltd. and observed in the reasoning that the shares acquired by Westfin Securities Limited from Samriti Chemicals Ltd. could be transferred to the aforementioned parties under the Pledge Agreement. The submission, therefore, based upon the Board of SEBI guide-lines on the above facts itself is inconceivable. As the transfer did not take place under the deed of

assignment of the Sponsorship Agreement.

15. There is nothing on record to show any embargo against the transfer under the Pledge Agreement or the Sponsorship Agreement.

16. The OTCEI guide-lines as contended is applicable only where there is post registration with OTCEI and not otherwise. It is admitted position that the appellants did not obtain registration with OTCEI on or before 30th November, 1995. There is nothing to show such registration at any point of time. Therefore, without registration there was no question of listing and without listing there could be no trading as alleged. The appellant's own breach put an end to and/ or excused the performance of the Sponsorers obligations.

17. The allotment of shares was for full consideration. The appellant was paid Rs.20/- per share, (Rs.10/- face value and Rs.10/- premium) of the sponsorship and therefore, received Rs.57,50,000/- for 2,87,500 shares. The sponsorer having paid for is entitled to pledge it. Therefore, the contention that the shares could not be pledge or sold is without

substance. The company, therefore, cannot refused to transfer such shares, basically in the facts and circumstances of the case.

18. The Company Law Board in this background has rightly granted liberty to the company to challenge the act of assignment by instituting the appropriate proceedings but it cannot refused transfer of shares as sought and further rightly observed that it cannot refuse registration of transfer on the ground not provided under Section 111A (2-3) of the Companies Act.

19. There is nothing to justify the contention that the Sponsorship and Pledge Agreement are composite. As noted though signed on same day, both these agreements are different.

20. In the facts and circumstances, the denial of transfer by the appellants on the foundation of Section 108 is also therefore, incorrect.

21. In view of this, the appellants have failed to make out any question of law to invoke Section 10F of the Companies Act.

22. In view of this, the appeal is dismissed.

23. No costs.

(ANOOP V.MOHTA, J.)